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In The

Supreme Court of the United States

OCTOBER TERM, 1940

NO. 92.

FLORENCE GUGGENHEIM, Petitioner,

v.

ALMON G. RASQUIN, Individually and as United States Collector of Internal Revenue for the First District of New York, Respondent.

NO. 486.

MADELEINE D. POWERS, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

On Writs of Certiorari to the United States Circuit Courts of Appeals for the Second Circuit and First Circuit.

BRIEF OF AMICUS CURIAE IN BEHALF OF MARTHA F. MASON.

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BRIEF OF AMICUS CURIAE IN BEHALF OF MARTHA F. MASON.

This Brief of *Amicus Curiae* in behalf of Martha F. Mason is filed with the consent of Counsel for the Petitioners and Counsel for the Respondents.

I.

PRELIMINARY STATEMENT.

Mrs. Martha F. Mason is the Petitioner in the case of *Martha F. Mason v. Commissioner of Internal Revenue, Respondent,* which is at present pending before the United States Board of Tax Appeals, Docket No. 92,376, on Petition for Redetermination of a deficiency gift tax for the year 1935 determined by the Commissioner in the amount of $32,983.18, which alleged deficiency arises because of the determination by the Commissioner that eight single premium life insurance policies purchased by Mrs. Mason in December, 1935, and by her irrevocably assigned in December, 1935, should be valued for gift tax purposes at the amount of the premiums paid, $356,867.80, rather than at the cash surrender value of said policies at the date of the gift, $298,784.48.

The Commissioner determined that, for gift tax purposes, the value of said life insurance policies as of the date of the gift was represented by the cost of the contracts in accordance with Article 19 (9) of Regulations 79 (1936 Edition) instead of by the cash surrender values of the contracts in accordance with Article 2 (5) of Regulations 79 (1933 Edition) in effect at the date of the gift.

II.

QUESTIONS PRESENTED.

1. What is the proper basis for the determination of the value for gift tax purposes of single premium life insurance policies made the subject of gift by the insured in 1935?

2. When the Commissioner has issued regulations interpretative of a statute imposing a gift tax following which the provisions of the statute are re-enacted by Congress without change, may the Commissioner thereafter apply retroactively a new regulation changing his already-established interpretation so as to increase the tax upon already-consummated transactions?

III.

ARGUMENT.

1. The proper basis for the determination of the value for gift tax purposes of single premium life insurance policies made the subject of gift by the insured in 1935, following their purchase, is the cash surrender value at the date of the gift.

A brief history of the Gift Tax and of the Commissioner's Regulations relative thereto may be helpful to an understanding of the questions at issue.

The first Gift Tax Act was contained in the Revenue Act of 1924, but it was omitted from the Revenue Act of 1926.

The Revenue Act of 1932 (Title III) re-enacted the Gift Tax Act, and it has remained a part of the Internal Revenue Laws since and has been carried over into the Internal Revenue Code—Section 1000, *et seq.*

The Revenue Act of 1932, in making provision for the valuation of gifts made in property, provided (Section 506):

> "If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift." (U. S. C. Title 26, Sec. 1005).

No change whatever has been made in the language of this section in succeeding Revenue Acts, and it has been carried over unchanged into the Internal Revenue Code (Section 1005).

The first Regulations issued by the Commissioner dealing with and interpreting the provisions of the Gift Tax Act were Regulations 79 (1933 Edition). By Article 2 (5) of Regulations 79 (1933 Edition), it was provided, as follows:

> "The irrevocable assignment of a life insurance policy, or the naming of the beneficiary of a policy without retaining any of the legal incidents of ownership therein, constitutes a gift in the amount of the cash surrender value, if any, plus, the prepaid insurance adjusted to the date of the gift."

Subsequent to the issuance of the aforesaid Regulations, the petitioners in the instant cases, as well as a number of others, including Martha F. Mason, whose cases have come before the lower courts on the same question, purchased single premium policies on their own lives, and, immediately or shortly thereafter, irrevocably assigned the policies to others, the assignments being made in such a way as to effect a gift of whatever interest in the policies the donors could assign. The donors filed gift tax returns for the year in which the assignments were made, and, in reliance upon and in accordance with the then extant Regulations of the Commissioner, returned as the value of the gifts the cash surrender values of the policies assigned. Shortly thereafter, in response to the request of the Treasury Department, the companies which had issued the policies of insurance made returns on official Treasury Department forms of the amount of the cash surrender values of the policies as of the date of the gifts.

On February 26, 1936, after the completion of the gifts in the instant cases, as well as in similar and related cases now before the lower courts, the Commission issued an amended edition of Regulations 79 wherein he completely changed the basis of value established in

the 1933 Edition and provided—Article 19 (9)—that the value for gift tax purposes of single premium policies (similar to those involved in the instant cases) should be the cost thereof.

It is respectfully submitted that Article 2 (5) of Regulations 79 (1933 Edition) was the fair and reasonable interpretation of Section 506 of the Gift Tax Act. *Per contra,* Article 19 (9) of Regulations 79 (1936 Edition) is an unreasonable and unjust interpretation of the language of Section 506 of the Gift Tax Act.

The Second Circuit Court in its decision in Case No. 92, *Florence Guggenheim v. Rasquin, Collector,* has chosen to regard the Commissioner's amended Regulations as presenting the fair interpretation of Section 506, and has referred to the original Regulations as "ambiguous." In support of this contention, there is cited in the Opinion an instance of a parent purchasing an automobile for $1,000.00, the automobile to be delivered to a son as a gift. Inferring that there is an analogy, and calling attention to the reasonable inference that the son could not obtain the full purchase price for the car even on the date of its delivery, the Court concludes that the value of the gift in such case would be $1,000.00, and sees in this example an analogy to be used in arriving at the proper basis for valuing insurance policies which are made the subject of gifts.

To quote the language of the Court:

> "We see no difference in principle between that case (i. e., the gift of the car) and the case where the parent takes out a single premium paid-up life insurance policy and gives it to a son forthwith."

After having accepted the two instances of gifts as analogous, the Court comes rather summarily to its conclusion:

"The value of the policy is what the parent paid for the policy, not what the son might obtain for it by surrendering it to the insurance company."

Let us suppose that the Second Circuit Court, in lieu of the instance cited above, had used as an example a case where a man "A" had ordered from a tailor a suit made to order, for which "A" paid one hundred dollars ($100.00); and that shortly after delivery of the suit, "A" gave it to "B". Could the Second Circuit Court have reasonably concluded that the value of "A's" gift to "B" of this suit, made to "A's" specifications, was equal to the amount that "A" had paid to the tailor? At the date of the gift, would such suit have a realizable value to "A", or to any other person, equal to its cost?

What the Second Circuit Court has apparently lost sight of is the fact that the automobile, which has been made the object of the illustrative gift, is a standardized unit, and that such unit would have the same value to any prospective purchaser of that model and make of automobile. However, in the case of a life insurance contract, we are dealing with a unique chose in action, a long term contract peculiarly adapted to the age and requirements of a particular person, which, although issued for a definite single premium, yet at any specific time following its issuance had no greater realizable value to a purchaser, a donee, or even the insured himself than the cash surrender value at that time.

The value of the insurance policy to the insured will vary according to social and moral factors and obligations which are peculiar to him, and it will be a value that cannot be expressed in monetary terms. Its value to any other person dealing at arms-length with the insured could never conceivably be more than what the insurance company would then be willing to pay upon the surrender of the policy to it. A prospective pur-

chaser or a person to whom the policy was assigned as a gift would have no interest, in the slightest degree, in policy reserves or in what the insured had paid for his policy or in the manner in which the amount of the premium paid was arrived at by the insurance company.

The First Circuit Court in the case of *Commissioner v. Madeleine D. Powers* has likewise agreed with the Commissioner's second interpretation as expressed in the amended edition of Regulations 79 (1936 Edition), Article 19 (9), citing the case of *Guggenheim v. Rasquin, supra,* as a precedent, if not a controlling authority. The reasoning of the Court in the *Powers* case appears to be that because insurance policies, once having been taken out, are not bought and sold in the market place like shares of stock or bushels of wheat, therefore their value as gifts must be assumed to be the premiums which the donors had paid to the insurance companies. The Court rejects the "fallacy" that the cash surrender value is the proper basis for arriving at the value of a policy. It endeavors to demonstrate that such basis is fallacious by pointing out that in at least one of the policies (in the *Powers* case), the insurance company was under no obligation to pay any cash surrender value during the first year of the policy's life.

It is quite correct, as the Court points out, that it could not be argued successfully that this policy had no value during its first year. However, it does not follow that the cash surrender value therefore is not the basis for determining the value of the policy. What the Court apparently fails to realize is that a fixed cash surrender value available at the end of one year can be realized upon by the insured *at any time* after the policy is issued by the simple expedient of assigning the policy to a third person who is willing to currently discount the obligation of the insurance company to pay a stated sum (cash

surrender value) one year after the policy has been issued.

The Court endeavors to bolster its conclusion by taking judicial notice of the fact that single premium policies have apparently no depreciation but constantly increase in value with the lapse of time. It regards this feature of a life insurance contract as indicating that the lowest value a single premium policy has is its cost and that from the date of its issuance, such value must inevitably increase.

But the only basis which is disclosed in the Court's opinion (and in the Record for that matter) for the conclusion that single premium policies invariably increase in value is the fact that their cash surrender values are larger each year than the preceding year. At the inception of the policy, however, such value is lower than the cost of the policy and a considerable lapse of time (necessarily at least several years) is required for the cash surrender value to equal the single premium paid.

No one would question that had the donors in the *Guggenheim* and *Powers* cases retained their policies a year and then made gifts of them, the taxable value of the gifts would have been greater than it was at the time the gifts were actually made. Simply by reference to the Table of Cash Surrender Values in the respective policies, the progressive increase in realizable values of the policies can be ascertained, and it is this cash surrender value changing and increasing as it does from year to year that measures the actual value of the gift. And even in the case of single premium policies some considerable lapse of time is required before realizable value equals the amount of the premium paid.

In the case of single premium policies such as those involved in the present cases, cost cannot be taken as a

true measure of their value. Each policy is a chose in action made to order. Its value in money or in money's worth can no longer be said to be as much as the insured paid for it. This factor of uniqueness necessarily reduces the value of the policy in the case of a purchaser or donee to the then cash surrender value of the policy. It is not what the insured bought but what he gave that is the subject of the Gift Tax and the only sound and proper basis for valuation for Gift Tax under Section 506 of the Revenue Act is the realizable value of such gift, or to quote said Section 506:

> "* * * the value thereof at the date of the gift"

We do not know of an instance where cost has been accepted as the proper basis of valuation in the case of property which has an instantly realizable money value. In fact, the Courts have quite generally refused to recognize cost as the proper basis or at least the sole basis even in the case of property which does not have a readily realizable cash value. *Denver Union Stock Yards v. United States,* 304 U. S. 470, 479; *Minnesota Rate Cases,* 230 U. S. 352, 454.

Surely if this Court has taken such a position with respect to the valuation of a railroad system or a public utility, the liquidation of which would necessarily require great effort over a long period of time, it could hardly be contended that cost was a factor determinative of the value of a life insurance policy which had a readily realizable cash value. The cost or "reproductive" value, for which the Commissioner here contends, is particularly inapplicable to a life insurance contract for the very reasons which have been hereinbefore set forth, *i. e.,* the unique character of the contract as peculiarly adapted to the age, health and family relationship of the insured, but which has no such value to a purchaser or

donee. Furthermore, in accordance with the agreement of the parties expressed in the instrument, such life insurance contract itself, sets forth the value attributable thereto during lifetime, as well as the value at death.

Gifts such as those made in the instant cases and in related cases were not gifts of premiums to the donees. The premiums were paid to the insurance companies, and, in return for the premiums, contracts of insurance were issued upon the lives of the insured (the donors) thereby creating unique choses in action. True, the donor, by assignment in each case, gave away all that he could. But while the insured paid the premium in consideration for the policy, all that he, the insured, as the donor could give away was the chose in action, a contract payable according to its terms, which gave to it specified realizable values at stated periods and which had a lesser value at the date of the gift than its cost, because, by the very manner of its creation, it had been tailored and measured to fit the donor and the donor alone.

The measure of the gift is what the donor or donee could have received upon a sale or surrender of the policy, as of the date of the gift (any time after it had been issued).

It has been urged before the lower courts, and may also be urged in the instant cases, that, in the case of *Lucas v. Alexander,* 279 U. S. 573, this Court has rejected the "Cash surrender value" as a measure of value of an insurance policy as of any given date. That case, however, dealt with an insurance policy which, during the lifetime of the insured, had already matured in an amount in excess of the aggregate of premiums paid in; and the only question involved was the determination of the value of the policy as of March 1, 1913, the policy having been taken out before that date, in order to fix

the amount of gain to the insured taxable for his income tax purposes.

Quite correctly, this Court rejected the argument of the Collector of Internal Revenue that for income tax purposes of the insured the cash surrender value as of March 1, 1913 of a policy which had matured was the cost basis thereof. To accept such an argument would have made disproportionately large the amount of the gains which had accrued since March 1, 1913, and would have made disproportionately small those which had occrued prior to March 1, 1913.

In no case, so far as we know, decided by the Board of Tax Appeals or any other Court, has the Government proved or attempted to prove by testimony or otherwise "* * * the value thereof at the date of the gift * * *" of single premium life insurance policies, the subject of a gift. On the contrary, it has relied entirely on the single standard arbitrary dictum set up by the Commissioner in his regulations issued in 1936 that the value of the gift is the cost of the policy, ignoring all of the usual and ordinary elements of value, and despite the specific provision contained in Regulations 79 (1933 Edition) and carried even into the 1936 Edition of those Regulations (Art. 19 (1)) that "All relevant facts and elements should be considered in every case." On the other hand, in most, if not all of these cases, the taxpayers have proved by competent testimony (and such testimony has not been rebutted by the Commissioner) that such policies have no higher or greater value at the date of the gift than the cash surrender value and that the cash surrender value is the fair market value.

For the reason that the 1933 Edition of Regulations 79 appears to correctly and reasonably interpret Section 506 of the Revenue Acts of 1932, 1935 and 1936, and for the further reason that Article 19 (9) of the Amended

Regulations 79 appears to interpret Section 506 incorrectly, it is respectfully urged that the decisions of the First and Second Circuit Courts in the instant cases be reversed.

2. When the Commissioner has issued regulations interpretative of a statute imposing a gift tax following which the provisions of the statute are re-enacted by Congress without change, the Commissioner may not thereafter apply retroactively a new regulation changing his already-established interpretation so as to increase the tax upon already-consummated transactions.

The Revenue Act of 1932, as hereinbefore stated, re-enacted as "Title III" a Gift Tax Act. The effective date of the Revenue Act of 1932 was June 6, 1932.

The Revenue Act of 1934 was enacted May 10, 1934, and it amended the Gift Tax Act and made certain changes in the rates of tax. No change, however, was made in Section 506 of said act.

The Revenue Act of 1935 was enacted August 30, 1935, and made further amendments to the Gift Tax Act. No change, however, was made in Section 506.

The Revenue Act of 1936, which was enacted June 22, 1936, made no amendments to any section of the Gift Tax Act.

Article 2 (5) of Regulations 79 (1933 Edition) remained in full force and effect from its publication in 1933 until February 26, 1936, shortly before the enactment of the Revenue Act of 1936. That is to say, during the period of its unquestionable force and validity, two successive Revenue Acts were passed by Congress and were approved by the President, both of which Acts dealt with provisions of the Gift Tax Act.

The rule as to the effect of a Regulation interpreting a Statute which has been re-enacted without change, following such interpretation, has been stated in Paul and Mertens "The Law of Federal Income Taxation" Volume 1, Section 3.19, as follows:

> "It is a well-settled rule and one frequently resorted to in the interpretation of taxing statutes, that an executive construction of an act is given special sanction where Congress re-enacts without change the statute so interpreted by the executive department. The absence of change in the later act is highly persuasive evidence of a legislative approval of the regulation construing the earlier act. The rule stated is of special force and effect where the departmental construction in question has been repeated and long continued, if valuable property rights have been based on the departmental construction, * * *."

This Court has spoken only recently of the effect of such unchanged interpretations, and in the case of *Helvering, Commissioner of Internal Revenue, v. Winmill,* 305 U. S. 79, has said: (page 83)

> "Treasury regulations and interpretations long continued without substantial change, applying to unamended or substantially re-enacted statutes, are deemed to have received congressional approval and have the effect of law."

This Court, also, in an earlier decision, in the case of *United States v. Dakota-Montana Oil Company,* 288 U. S. 459, said: (page 466)

> "The administrative construction must be deemed to have received legislative approval by the re-enactment of the statutory provision without material change. *Murphy Oil Co. v. Burnet,* 287 U. S. 299; *Brewster v. Gage,* 280 U. S. 327, 337."

It would seem that since Section 506 of the Revenue Act of 1932 fixed no other measure for the basis of taxation than that of "value" an interpretation or ruling by the Commissioner with respect to certain subjects of gifts, such as life insurance policies, was proper. As has heretofore been stated, such interpretation was forthcoming in the 1933 Edition of Regulations 79. Therein, it was provided that the value should be the cash surrender value as of the date of the gift. Such interpretation was a fair and reasonable construction of the statute and furnished a simple and practicable measuring stick and one with which banks and other third parties, who entered into financial transactions having relationship to the value of life insurance policies, would be in accord.

That interpretation continued in full force and effect while two successive Revenue Acts were enacted and, as this Court has said in the case of *McCaughn v. Hershey Chocolate Company,* 283 U. S. 488, on page 492 of the Opinion:

> "Possible doubts as to the proper construction of the language used should be resolved in the light of its administrative and legislative history. Shortly after the adoption of the 1918 Act, Art. 22 of Regulations 47, May 1, 1919, announced that 'Candy within the meaning of the act includes * * * sweet chocolate and sweet milk chocolate, whether plain or mixed with fruit or nuts.' This continued to be the ruling of the Treasury Department until the repeal of the tax by § 1100 (a) of the Revenue Act of 1924, 43 Stat. 253, 352. * * *.
>
> "The administrative construction was upheld in 1922 by *Malley v. Walter Baker & Co., supra,* the only case, other than the present, which has considered it. The provision has been consistently enforced as construed, was re-enacted by Congress in the 1921 Act, and remained on the statute books

without amendment until its repeal. Such a construction of a doubtful or ambiguous statute by officials charged with its administration will not be judicially disturbed except for reasons of weight, which this record does not present. See *Brewster v. Gage*, 280 U. S. 327, 336; *Universal Battery Co. v. United States*, 281 U. S. 580, 583; *Fawcus Machine Co. v. United States*, 282 U. S. 375, 378. The reactment of the statute by Congress, as well as the failure to amend it in the face of the consistent administrative construction, is at least persuasive of a legislative recognition and approval of the statute as construed. See *National Lead Co. v. United States*, 252 U. S. 140, 146. We see no reason for rejecting that construction."

Congress has dealt with the validity and effectiveness of Regulations issued by the Commissioner or the Treasury Department in the Revenue Act of 1926, and, in Section 1108, paragraph (a), the following was provided:

"(a) In case a regulation or Treasury decision relating to the internal revenue laws, made by the Commissioner or the Secretary, or by the Commissioner with the approval of the Secretary is reversed by a subsequent regulation or Treasury decision, and such reversal is not immediately occasioned or required by a decision of a court of competent jurisdiction, such subsequent regulation or Treasury decision may, in the discretion of the Commissioner, with the approval of the Secretary, be applied without retroactive effect."

This section was amended by the Revenue Act of 1928, (Section 605), which provided as follows:

"In case a regulation or Treasury decision relating to the internal revenue laws is amended by a subsequent regulation or Treasury decision, made

by the Secretary or by the Commissioner with the approval of the Secretary, such subsequent regulation or Treasury decision may, with the approval of the Secretary, be applied without retroactive effect."

This, again, was amended by the Revenue Act of 1934, (Section 506) which provided as follows:

> "The Secretary, or the Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect."

In speaking of the Amendment, as above quoted from the Revenue Act of 1928, this Court has recently said in its Opinion in the case of *Helvering, Commissioner of Internal Revenue, v. R. J. Reynolds Tobacco Company,* 306 U. S. 110, the following: (Pages 116 and 117)

> "It is clear from this provision that Congress intended to give to the Treasury power to correct misinterpretations, inaccuracies, or omissions in the regulations and thereby to affect cases in which the taxpayer's liability had not been finally determined, unless, in the judgment of the Treasury, some good reason required that such alterations operate only prospectively. The question is whether the granted power may be exercised in an instance where, by repeated re-enactment of the statute, Congress has given its sanction to the existing regulation.
>
> "Since the legislative approval of existing regulations by re-enactment of the statutory provision to which they appertain gives such regulations the force of law, we think that Congress did not intend to authorize the Treasury to repeal the rule of law that existed during the period for which the tax is imposed. We need not now determine whether, as

has been suggested, the alteration of the existing rule, even for the future, requires a legislative declaration or may be shown by re-enactment of the statutory provision unaltered after a change in the applicable regulation. As the petitioner points out, Congress has, in the Revenue Acts of 1936 and 1938, retained § 22 (a) of the 1928 Act in *haec verba*. From this it is argued that Congress has approved the amended regulation. It may be that by the passage of the Revenue Act of 1936 the Treasury was authorized thereafter to apply the regulation in its amended form. But we have no occasion to decide this question since we are of opinion that the reenactment of the section, without more, does not amount to sanction of retroactive enforcement of the amendment, in the teeth of the former regulation which received Congressional approval, by the passage of successive Revenue Acts including that of 1928."

The sections of the Internal Revenue Acts quoted above and the opinions of this Court cited above determine conclusively that the Commissioner cannot apply retroactively an amended and changed regulation, issued in 1936, to gifts concluded in 1935 under an existing regulation, issued in 1933, which had received the legislative approval of Congress in the passage of two succeeding Revenue Acts making no change in the section of the Act to which the 1933 regulation applied.

CONCLUSION.

In conclusion, we submit that the decisions below in *Guggenheim v. Rasquin,* 110 Fed. (2d) 371, and *Powers v. Commissioner,* 115 Fed. (2d) 209, are erroneous and should be reversed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 92.—October Term, 1940.

Florence Guggenheim, Petitioner, *vs.* Martha E. Rasquin, Administratrix of the Estate of Almon Q. Rasquin, Deceased.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[February 3, 1941.]

Mr. Justice Douglas delivered the opinion of the Court.

It is provided in the Revenue Act of 1932 (47 Stat. 169, 248) that for gift-tax purposes the amount of a gift of property shall be "the value thereof at the date of the gift." § 506. This controversy involves the question of whether such "value" in case of single-premium life insurance policies, which are irrevocably assigned simultaneously with issuance, is cost to the donor or cash-surrender value of the policies. The case is here on a petition for certiorari which we granted because of a conflict among the Circuit Courts of Appeals[1] as respects the proper method for valuation of such gifts made prior to 1936.[2]

In December, 1934, petitioner purchased, at a cost of $852,438.50, single-premium life insurance policies on her own life in the aggregate face amount of $1,000,000. At substantially the same time she assigned them irrevocably to three of her children. Her gift-tax return listed the policies at their asserted cash-surrender value[3] of

1 In conflict with the decision below are Commissioner v. Haines, 104 F. (2d) 854 (C. C. A. 3d); Helvering *v.* Cronin. 106 F. (2d) 907 (C. C. A. 8th); United States *v.* Ryerson, 114 F. (2d) 15[illegible] (C. C. A. 7th), discussed in Paul, Studies in Federal Taxation (3d series) pp. 403, *et seq.*

2 Art. 19(9), Treasury Regulations 79, promulgated February 26, 1936, provides that replacement cost at the date of the gift is the measure of value of a single-premium life insurance policy.

3 The government asserts that none of the policies had a cash-surrender value prior to the expiration of one year. In view of our disposition of the case we do not stop to decide whether, in view of the pleadings and the stipulation, that position can be maintained here.

$717,344.81. The Commissioner determined that the "value" of the policies was their cost and assessed a deficiency which petitioner paid. This is a suit for a refund. Judgment for petitioner in the District Court was reversed by the Circuit Court of Appeals. 110 F. (2d) 371.

We agree with the Circuit Court of Appeals that cost rather than cash-surrender value is the proper criterion for valuation of such gifts under § 506 of the Act.

Cash-surrender value is the reserve less a surrender charge. And in case of a single-premium policy the reserve is the face amount of the contract discounted at a specified rate of interest on the basis of the insured's expected life. If the policy is surrendered, the company will pay the cash-surrender value. It is asserted that the market for insurance contracts is usually the issuing companies or the banks who will lend money on them; that banks will not loan more than the cash-surrender value; and that if policies had an actual realizable value in excess of their cash-surrender value, there would arise a business of purchasing such policies from those who otherwise would surrender them. From these facts it is urged that cash-surrender value represents the amount which would be actually obtained for the policies in a willing buyer-willing seller market—the test suggested by Treasury Regulations 79, Art. 19(1), promulgated October 30, 1933.[4]

That analysis, however, overlooks the nature of the property interest which is being valued. Surrender of a policy represents only one of the rights of the insured or beneficiary. Plainly that right is one of the substantial legal incidents of ownership. See *Chase National Bank* v. *United States,* 278 U. S. 327, 335; Vance on Insurance (2d ed.) pp. 54-56. But the owner of a fully paid life insurance policy has more than the mere right to surrender it; he has the right to retain it for its investment virtues and to receive the face amount of the policy upon the insured's death. That these latter rights are deemed by purchasers of insurance to have substantial value is clear from the difference between the cost

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[4] Art. 19(1) provided: " . . . The value of property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell. Where the property is sold within a reasonable period after the date of the gift, and it is shown that the selling price reflects the fair market value thereof as of the date of the gift, the selling price will be accepted as the amount of the gift. All relevant facts and elements of value should be considered in every case."

of a single-premium policy and its immediate or early cash-surrender value—in the instant case over $135,000. All of the economic benefits of a policy must be taken into consideration in determining its value for gift-tax purposes. To single out one and to disregard the others is in effect to substitute a different property interest for the one which was the subject of the gift. In this situation as in others (*Susquehanna Power Co.* v. *State Tax Commission*, 283 U. S. 291, 296) an important element in the value of the property is the use to which it may be put. Certainly the petitioner here did not expend $852,438.50 to make an immediate gift limited to $717,344.81. Presumptively the value of these policies at the date of the gift was the amount which the insured had expended to acquire them. Cost is cogent evidence of value. And here it is the only suggested criterion which reflects the value to the owner of the entire bundle of rights in a single-premium policy—the right to retain it as well as the right to surrender it. Cost in this situation is not market price in the normal sense of the term. But the absence of market price is no barrier to valuation.[5] *Lucas* v. *Alexander*, 279 U. S. 573. 579.

Petitioner, however, argues that cash-surrender value was made the measure of value by Art. 2(5), Treasury Regulations 79, promulgated October 30, 1933, which provided that the "irrevocable assignment of a life insurance policy . . . constitutes a gift in the amount of the net cash surrender value, if any, plus the prepaid insurance adjusted to the date of the gift." The argument is that under this regulation the reserve in case of a single-premium policy covers the prepaid insurance and represents the entire value of the policy. The regulation is somewhat ambiguous. But in our view it applied only to policies upon which current premiums were still being paid at the date of the gift, not to single-premium policies. Accordingly, the problem here involves an interpretation of the meaning of "value" in § 506 unaided by an interpretative regulation.

Affirmed.

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[5] In this connection it should be noted that Art. 19(1), *supra*, note 4, did not establish market price as the sole criterion of value.